MINING CLAIM—RAILROAD GRANT—SCHOOL GRANT.

PACIFIC COAST MARBLE CO. *v.* NORTHERN PACIFIC R. R. CO. ET AL.

Whatever is recognized as a mineral by the standard authorities, whether of metallic or other substances, when found in the public lands, in quantity and quality sufficient to render the land more valuable on account thereof than for agricultural purposes, must be treated as coming within the purview of the mining laws.

Lands valuable only on account of the marble deposit contained therein are subject to placer entry under the mining laws.

Lands containing valuable mineral deposits, whether of the metalliferous or fossiliferous class, of such quantity and quality as to render them subject to entry under the mining laws, are "mineral lands" within the meaning of that term as used in the exception from the grant to the Northern Pacific Company for railroad purposes, and to the State for school purposes.

The case of Tucker *v.* Florida Railway and Navigation Co., 19 L. D., 414, overruled.

Secretary Bliss to the Commissioner of the General Land Office, September 9, 1897.

(W. V. D.) (A. B. P.)

The land involved in this controversy includes parts of sections 14, 15, 16, 21, and 22, T. 28 N., R. 36 E., W. M., Spokane, Washington. The portions thereof which lie in sections 15 and 21, are claimed by the Northern Pacific Railroad Company, by virtue of its list, No. 7, of indemnity selections, under its grant of July 2, 1864 (13 Stat., 365). That portion which lies in section 16, is claimed by the State of Washington, under its grant for school purposes, by the act of February 22, 1889 (25 Stat., 676, sections 10 and 18). The whole thereof—embracing 120 acres—is claimed by the Pacific Coast Marble Company, under its application for patent filed October 15, 1895, based upon six distinct but contiguous placer mining locations, of twenty acres each, made prior thereto, and known, respectively, as the Clark, Heitkemper, Clarno, Liebe, Haight, and Strode, mining claims.

On January 2, 1896, the mineral claimant presented its proof of publication, etc., and tendered payment for the land. The local officers declined to receive the money, owing to the conflicts with the railroad company and the State, and thereupon transmitted the record to your office, with request for instructions as to the proper course to pursue. Under date of January 17, 1896, your office replied, stating "that the lands containing a deposit of marble, which can be mined at a profit, are subject to disposition under the mining laws," but that the mineral claimant's application should have been treated as in the nature of a contest against the railroad company's selection; that the State should have been notified, and ruled to show cause, etc.; that before the applicant could be allowed to purchase under the mining laws, it would have to proceed as thus indicated; and the local officers were instructed to require proceedings to be had accordingly.

The State was thereupon notified, and in reply, filed its protest, admitting the existence of marble in the land, but contending that

marble is not such a mineral as serves to except lands containing it from the grant to the State for school purposes.

As a further result of the instructions from your office, a hearing was had, at which all the parties appeared. After the examination of two witnesses, and the introduction of certain specimens of marble from the claims, as exhibits in the case, the parties, without proceeding further with the testimony, entered into a written stipulation whereby, "for the purpose of saving further cost and time in taking evidence," it was agreed

> that the land in controversy is not agricultural or grazing land, and is valuable only for the marble it contains; and this controversy shall be submitted upon the legal question of whether or not marble is a mineral such as to except the land from the grant to the Northern Pacific Railroad Company by virtue of its indemnity selection.

It was also agreed in the same writing, that the testimony, as taken, should be considered only upon the question as to the value of the land on account of the marble it contains, and as to whether marble is a mineral within the meaning of the grant to the railroad company; and it was further stated that this stipulation and agreement should apply to the State of Washington, and that its protest should be merged with that of the railroad company, and be heard as one case on appeal.

The local officers held the land in question to be mineral in character, and that by reason thereof, the portions situated in sections 15 and 21, were excepted from the grant to the railroad company, and the portion situated in section 16, was excepted from the grant to the State.

Both the railroad company and the State appealed.

On August 13, 1896, your office, after observing that under the previous rulings and decisions of the Land Department, public lands chiefly valuable for the deposits of marble therein, had been held subject to entry under the mining laws, but that the question here involved was whether or not such lands passed to the railroad company and the State under their respective grants, held, (1) that the portions of the land in question embraced in sections 15 and 21, were not excepted from the railroad company's grant, (2) that the portion thereof embraced in section 16, was not excepted from the grant to the State, and (3) that the application of the mineral claimant should, therefore, be canceled.

The mineral claimant has appealed to the Department. Several errors are assigned, but they need not be here set out in detail. It is sufficient to say that, in substance, they attack and put squarely in issue the correctness of the several holdings of your said office decision.

The importance of the questions involved is conceded by all parties, and in view thereof, upon request of the mineral claimant, concurred in by the railroad company, and not objected to by the State, the case has been advanced from its regular order and made special.

All questions of fact are settled by the stipulation, and by the evidence introduced before it was entered into. The stipulation shows the land to be non-agricultural, and valuable only for the marble it contains. The evidence shows that the marble is of a superior quality,

susceptible of a high polish, and useful for ornamental purposes. The deposit is represented as very extensive.

The case has been elaborately and ably argued by counsel for the contending parties, both orally and by printed briefs. In view of the magnitude of the interests at stake, and the importance of the questions involved, it has been given the most careful and painstaking consideration.

Briefly stated, the issue presented is, whether lands chiefly valuable on account of the deposits of marble they contain, are embraced by the terms "mineral lands," and "lands valuable for minerals," as those terms are used, respectively, in the aforesaid granting acts, and in the mining statutes of the United States. If such lands are so embraced, then your office decision is wrong, and should be reversed; if not, that decision is right and should be affirmed.

The grant to the Northern Pacific Railroad Company, is of "every alternate section of public land, not mineral," within certain prescribed limits, and with stated provision for indemnity for losses in place limits.

The grant contains several provisos, among which, as pertinent to the issue here involved, are the following:

Provided further: That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections, nearest the line of said road, may be selected as above provided:

And provided further: That the word "mineral," when it occurs in this act, shall not be held to include iron or coal.

The grant to the State, for school purposes, is of "Sections numbered sixteen and thirty-six in every township," with the express provision "that all mineral lands shall be exempted" therefrom. Ample provision for indemnity is made, in the grant to the State, for losses on account of mineral lands.

The mining statutes, as originally enacted, are found in the several acts of July 4, 1866 (14 Stat., 85–6), July 26, 1866 (Id., 251–2), July 9, 1870 (16 Stat., 217), May 10, 1872 (17 Stat., 91–2), February 18, 1873 (17 Stat., 465), and March 3, 1873 (Id., 607). The various provisions of these several acts, as at present codified, are embodied, under the head of "Mineral Lands and Mining Resources," in the Revised Statutes, sections 2318 to 2352, inclusive, except section 2346, which need not be herein referred to. The particular provisions important to here note, are as follows:

Section 2318 provides that—

In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Section 2319 provides that—

All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase . . . . under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Sections 2320 to 2324, inclusive, prescribe certain rules and regulations to govern the location of—

> Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits.

Sections 2325 to 2328, inclusive, provide the manner of obtaining title from the government for lands "claimed and located for valuable deposits" under the preceding sections.

By section 2329 it is provided that—

> Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims.

The succeeding sections contain nothing which is necessary to be noted in this discussion.

Briefly summarized, the contention of the railroad company is, that the term "mineral lands," as used in its grant of 1864, and in other railroad land grants, as well as the terms, "lands valuable for minerals," and "valuable mineral deposits," as used in the mining laws, were intended to include only minerals of the metallic class; that the term "mineral lands" as used in its said grant should be construed as excluding therefrom only lands containing valuable metalliferous deposits; and that as marble is not such a deposit, lands containing it, though chiefly valuable on account thereof, are not excepted from its grant. The State takes a similar position with reference to its grant.

This position is squarely attacked by the mineral claimant. Its contention is that the *value*, and not the *kind* of any given mineral deposit, is the controlling key, which is to determine the question whether the lands containing such deposit are included within the meaning of the terms, "lands valuable for minerals," "valuable mineral deposits," and "minerals lands," as used, as aforesaid.

The railroad company's contention is predicated upon the theory that the ordinary and accepted meaning of the term "mineral", as used in America, and particularly in land legislation, prior to and at the date of its grant of July 2, 1864, did not include any mineral deposits except those of the metallic class, and that therefore Congress in making its grant did not intend, by the use therein of the term "mineral lands", to exclude therefrom any lands except those containing metallic minerals; that there is nothing in the mining statutes to indicate that Congress used the terms, "lands valuable for minerals" and "valuable mineral deposits", as therein stated, in any larger or more comprehensive sense than is indicated by the use of the term "mineral lands" in its said grant; that section 2329, which provides for the entry and patent of "claims usually called placers, including all forms of deposit, excepting veins of quartz, or other rock in place," was intended to include only such claims as contain auriferous deposits; and that it

was not the purpose of any subsequent legislation to in anywise enlarge the meaning of the term "mineral lands" as used in its grant.

By the pre-emption act of September 4, 1841 (5 Stat., 453–6), provisions were made for the entry and purchase of the vacant public lands, but it was further provided that no lands on which were situated "known salines or mines", should be subject to entry or sale thereunder. It is contended that "what Congress meant in this act by the term 'mines' must be gathered from the preceding uniform policy as set forth in the legislation" on the subject of mineral in the public lands; and it is claimed that such policy is distinctly indicated by the preceding legislation which reserved to the United States, "lead mines and salt springs, absolutely, and a one-third part of all gold, silver, lead, and copper mines," or, excepting salt springs, minerals of the metallic class only. This preceding legislation is referred to as being embodied in a certain ordinance of the Congress sitting under the Articles of Confederation, passed May 20, 1785, and in certain acts of the Congress under the Constitution, passed at various times, down to and including the year 1816.

It is to be observed, however, that in the act of July 1, 1864 (13 Stat., 343), providing for the disposal of coal lands in the public domain, Congress gave, on this point, its own definition of the term "mines" as used in the former pre-emption act, by declaring that—

> Any tracts embracing coal-beds or coal-fields, constituting portions of the public domain, and which, as "mines" are excluded from the pre-emption act of eighteen hundred and forty-one,

might be sold under the terms therein prescribed.

Coal is a non-metallic mineral, and we have here an express declaration of Congress that the same is included within the meaning of the stated exception from said pre emption act.

In the case of Mullan *v.* United States (118 U. S., 271) the question was, whether coal lands are mineral lands within the meaning of the statutes regulating the disposition of the public domain. The court, after referring to the pre emption act of 1841, and the coal act of July 1, 1864, said, of the provision herein above quoted from the latter act:

> This is clearly a legislative declaration that "known" coal lands were mineral lands within the meaning of that term as used in statutes regulating the public lands, unless a contrary intention of Congress was clearly manifested.

Here we have both a legislative declaration, and the highest judicial determination, that the term "mineral lands" in the public land laws does include minerals other than those of the metallic class.

It was held by Attorney General Williams, in an opinion under date of August 31, 1872, given at the request of the Secretary of the Interior, that diamonds are embraced by the term "valuable mineral deposits", as used in the act of May 10, 1872. He refers also to the act of July 26, 1866, and expresses the opinion that "these acts ought to be most liberally construed, so as to facilitate the sale" of the mineral lands of the

public domain (14 Op. A. G., 115). These views were concurred in and adopted as the guide for official action in like cases, by Acting Secretary Smith, in a communication addressed to Commissioner Drummond of the General Land Office, dated September 3, 1872 (Copp's Mineral Lands, 119).

In a general circular issued under the mining laws, dated July 15, 1873, Commissioner Drummond, speaking upon the subject of what constitutes "a valuable mineral deposit," said:

> That whatever is recognized as a mineral by the standard authorities on the subject, where the same is found in quantity and quality to render the land sought to be patented more valuable on this account than for purposes of agriculture, should be treated by this office as coming within the purview of the mining act of May 10, 1872.

It was further stated:

> The language of the statute is so comprehensive, and capable of such liberal construction, that I cannot avoid the conclusion that Congress intended it as a general mining law, "to promote the development of the mining resources of the United States," and to afford a method whereby parties holding the possessory right under local laws and regulations could secure title to tracts containing valuable accretions or deposits of mineral substances, except when a special law might intervene, reserving from sale, or regulating the disposal of particularly specified mineral-bearing lands.

In answer to inquiries, the consideration of which gave rise to the circular, it was further said:

> I therefore reply that lands valuable on account of borax, carbonate of soda, nitrate of soda, sulphur, alum, and asphalt, as well as "all valuable mineral deposits," may be applied for and patented under the provisions of the mining act of May 10, 1872 (Copp's Mineral Lands, 61–2).

It is proper to observe in this connection, that prior to the issuance of this circular, a special statute had been enacted regulating the disposal of coal lands (Act of July 1, 1864, *supra*), and that the uniform policy of the government had been to reserve salt lands and salt springs from sale, absolutely. (See Morton *v.* Nebraska, 21 Wall., 660, and the various acts of Congress therein referred to; Hall *v.* Litchfield, Copp's Mineral Lands, 321; Salt Bluff Placer, 7 L. D., 549.) These things were doubtless in the mind of the Commissioner at the time, and they furnish an explanation of the exceptions noted in said circular.

Following this circular, Commissioner Drummond, on July 20, 1873, held that lands more valuable on account of deposits of iron ore, than for agricultural purposes, were subject to disposal under the provisions of the mining laws. (Copp's Mining Decisions, 214.)

On January 30, 1875, it was held by Commissioner Burdett, that lands containing valuable deposits of umber, or of petroleum, were subject to entry under the mining laws. (Sickles' Mining Laws, 491). And on June 28th following, it was held by the same Commissioner, that lands more valuable for deposits of limestone, or marble, than for purposes of agriculture, and lands containing valuable deposits of kaolin,

are subject to disposal under the mining acts. (Copp's Mining Lands, 194.)

It was also held by Commissioner McFarland, on March 31, 1882, that lands containing deposits of petroleum "are subject to entry and disposal according to the law and regulations relating to placer claims" (9 C. L. O., 51). And by the same Commissioner, in the case of Montague *v.* Dobbs (9 C. L. O., 165, 1882), it was further held that veins of clay and other non-metalliferous mineral substances are subject to location as placers; also building stone, in the case of H. P. Bennett Jr. (1884, 3 L. D., 116).

The case of W. H. Hooper (1 L. D., 560, 1881) involved the question whether gypsum is a mineral within the meaning of the mining laws. In disposing of the case Secretary Kirkwood referred to and concurred in the views expressed in the circular of July 15, 1873, namely:

> That whatever is recognized as a mineral by the standard authorities on the subject, when the same is found in quantity and quality to render the land sought to be patented more valuable on this account than for purposes of agriculture, should be treated as coming within the purview of the mining act of 1872.

No proof having been introduced to show the comparative value of the particular tract involved, for mineral or agricultural purposes, an investigation, in that respect, was ordered, with the direction that if the land should be found to have greater value for the former, patent should issue to the mineral claimant.

In a communication by Secretary Teller to Commissioner McFarland, under date of January 30, 1883, it was directed that "public lands containing valuable deposits of borax, the carbonate and nitrate of soda, sulphur, alum, and asphalt," when shown to be valuable only on account of such deposits, should be enterable under the mining laws (1 L. D., 561).

Following this, on April 16, 1883, in the case of Maxwell *v.* Brierly (10 C. L. O., 50), Secretary Teller, after referring with approval to the circular of July 15, 1873, held that lands containing deposits of "gypsum and limestone . . . asphaltum, borax, auriferous cement, fire-clay, kaolin, mica, marble, petroleum, slate, and other substances," are subject to the operation of the mining laws, when shown to be more valuable on account of such deposits than for agricultural purposes. (See also 1 Brainard's Legal Prec., 98). And in the case of The Dobbs Placer Mine (1 L. D., 565–9, 1883), the same Secretary held that "fire-clay or kaolin, in the manner in which it exists as a deposit, is properly the subject of a placer location."

Such are some of the rulings and decisions of the Land Department, made shortly after the mineral land laws became a part of the public land system, and by the officers of the government charged with their administration; and as contemporaneous and uniform interpretation, they are entitled to great weight.

These and other rulings on the subject, with few exceptions, have been consistently and uniformly to the effect that the mining laws

embrace not only lands containing metallic minerals, but all valuable mineral deposits of whatever kind or nature—whether metalliferous or fossiliferous—wherever the lands containing them are shown to be more valuable on account thereof, than for agricultural purposes. The value of the mineral deposit, rather than its kind, appears to have been the controlling factor in determining whether the lands containing it were subject to entry and patent under the mining laws.

In this connection, it is permissible to refer to some legislation on the subject, since the act of May 10, 1872.

By act of February 18, 1873 (17 Stat., 465), "deposits or mines of iron and coal," in the States of Michigan, Wisconsin and Minnesota, were expressly excluded from the operation of the act of May 10, 1872, and lands containing such deposits were declared subject to sale and purchase according to legal subdivisions, as before the passage of the act of 1872. The act of 1873 would have been wholly unnecessary to accomplish the exclusion stated as to coal, if it were true that the act of 1872 was not intended to embrace any minerals except those of the metallic class.

By the act of May 5, 1876 (19 Stat., 52), it was declared that "deposits of coal, iron, lead, or other mineral," within the States of Missouri and Kansas, should be excluded from the operation of the act of May 10, 1872, and all lands in said States were made subject to disposal as agricultural lands. Here non-metallic minerals are also referred to, and what has been said of the act of February 18, 1873, applies equally to this.

The act of June 3, 1878 (20 Stat., 89), provided for the sale of lands chiefly valuable for timber or stone, in certain States and Territories, but declared that nothing therein contained should "authorize the sale of any mining claim . . . or lands containing gold, silver, cinnabar, copper, or coal." Both classes of minerals are again specifically mentioned, the metalliferous and non-metalliferous being associated together and placed upon an equality.

By the act of March 3, 1883 (22 Stat., 487), it was declared:

> That within the State of Alabama, all public lands, whether mineral or otherwise, shall be subject to disposal only as agricultural lands: *Provided however*, That all lands which have heretofore been reported to the General Land Office as containing coal and iron, shall first be offered at public sale.

Here the mention of coal, a non-metalliferous mineral, is again closely associated with iron, a metalliferous mineral, and both are named in connection with mineral lands.

The following are some of the more important recent decisions of this Department on the subject.

Conlin *v.* Kelly (12 L. D., 1—1891). In this case it was held that stone useful only for general building purposes is not subject to appropriation under the mining laws. It was further stated, however, that—

> The stone in the tract in controversy has no peculiar property or characteristic that gives it especial value, such as attaches to gypsum, limestone, mica, marble, slate, asphaltum, borax, auriferous cement, fire-clay, kaolin or petroleum.

McGlenn *v.* Wienbroeer (15 L. D., 370—1892). Here the decision was that lands containing a valuable deposit of stone, useful for special purposes, may be entered as a placer claim; and the case of Conlin *v.* Kelly was distinguished.

Van Doren *v.* Plested (16 L. D., 508—1893). In this case it was held (syllabus) that—

> Land containing a deposit of sandstone of a superior quality for building and ornamental purposes, and valuable only as a stone quarry, may be entered as a placer claim under the general mining laws.

Hayden *v.* Jamison (Id., 537) and Clark *v.* Erwin (Id., 122) were cases similar to that of Conlin *v.* Kelly, *supra.*

In Shepherd *v.* Bird (17 L. D., 82—1893) it was held that lands containing stone suitable for making lime, might properly be entered as a placer claim, or purchased under the timber and stone act of June 3, 1878.

In Gary *v.* Todd (18 L. D., 58—1894) it was held that lands chiefly valuable for phosphate deposits were mineral lands and not subject to entry under the homestead laws.

These decisions, as a rule, do not vary materially, if at all, from the earlier rulings and decisions of the Land Department on the subject. On the contrary, they show a practically uniform adherence to the rule originally announced in the circular of July 15, 1873, hereinbefore referred to. They are generally to the effect that lands *chiefly valuable* for mineral deposits, of whatever kind or nature, may be properly disposed of under the mining laws.

In the case of Freezer *v.* Sweeney (21 Pac. Rep., 20) the supreme court of Montana (1889), referring to certain adjudications of the Land Department on the subject, held that a stone quarry may be located and patented as a placer claim. In its opinion the court refers to section 2329 of the Revised Statutes, and says:

> This section extends and enlarges the signification commonly given to "placer claims," and makes such locations include all forms of deposit, excepting quartz veins or other rock in place. The officers of the Land Department have construed it as embracing quarries of rock valuable for building purposes, as already stated, and we do not doubt the correctness of this construction.

The contrary view was taken, however, by the supreme court of the State of Washington, at a later date, in the case of Wheeler *v.* Smith (32 Pac. Rep., 784). These are the only cases cited from the courts which discuss or attempt to determine whether non-metallic minerals are minerals within the meaning of that word as employed in the statutes relating to the disposition of the public lands.

The interpretation thus shown to have been adopted at an early date by the Land Department, and followed with practical uniformity for over twenty years, is attacked as being obnoxious to well established rules of construction. It is insisted that the particular and specific words, "gold, silver, cinnabar, lead, tin, copper," as used in section 2320

of the Revised Statutes, must be considered as furnishing a guide to, and placing a limitation upon the meaning to be given the general words which immediately follow, and that in view thereof the general words must be held to include only deposits of the same kind or nature as those designated by the preceding particular words—that is, mineral deposits of the kind or nature *ejusdem generis* with gold, silver, cinnabar, lead, tin, or copper—or, in other words, metalliferous ore. The same position is taken with reference to section 2329. The specific word there is, "placers." That word, it is said, should be restricted to its technical meaning—places where gold is found—and further, that the general words—"including all forms of deposit"—which follow, must be held, under the rule, to include only the different forms of placer gold deposits.

The Department is not unaware of the well settled rule of statutory construction upon which this contention is sought to be based, namely: That general words which follow particular and specific words of the same kind or nature, take their meaning from the particular and specific words, and are generally presumed to be restricted to the same genus as those words, and as comprehending only things of the same kind as those designated by them; but it must be remembered that this rule has its proper application only in cases where there is nothing in the statute tending to show that a wider and more comprehensive meaning was intended by the use of the general words. If, therefore, said sections 2320 and 2329, only, were to be construed, and that, independently of anything outside of them, as though standing by themselves; or, if the act as a whole contained nothing of a nature purporting to show that the general words used in said sections were intended in a larger sense than the specific words indicate; then the present case might be considered such an one as to justify the application of the rule.

The sections named, however, are not to be construed by themselves. The whole act is to be looked to, and its general purpose ascertained, in order to properly determine the meaning of its several provisions, and the different sections are to be construed as parts of one general statute. Thus looking at the act, we find its general purpose stated in section 2319 (Sec. 1, Act of 1872) in the broad declaration that—

> All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found, to occupation and purchase, by citizens of the United States, etc.

It is important to observe that there is no limitation or restriction as to the kind or class of mineral deposits which are thus made subject to exploration and purchase. The invitation is to explore and purchase "all valuable mineral deposits" in the public lands, and to occupy and purchase the lands in which they may be found. Broader, or more comprehensive language could hardly have been used. Wherever mineral deposits are found in the public lands, they are declared to be free

and open to exploration and purchase, with only one qualification—they must be *valuable* mineral deposits.

Then follow certain provisions for the acquisition of title from the government to mining claims, once discovered and properly located, whether they be "upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits," (Sec. 2320), or whether they be "claims usually called 'placers', including all forms of deposit, excepting veins of quartz, or other rock in place," (Sec. 2329).

Now, coming again to the general words "or other valuable deposits," as used in section 2329, with reference to vein or lode claims, and the words "including all forms of deposit," as used in section 2329, with reference to claims usually called "placers", and construing them in the light of the declared general purpose of the act, as a whole, as specifically indicated in sections 2318 and 2319, the conclusion seems irresistible that the general words in question, as used in both instances, depend for their meaning, not only upon the specific words which they follow, but depend also upon and draw from the larger and more comprehensive expressions—"all valuable mineral deposits," as used in section 2319, and "lands valuable for minerals", as used in section 2318. Looking, then, to both the sources stated for the guide to the meaning of the general words, the further conclusion seems equally irresistible that in the first instance (Sec. 2320) they were intended to include other valuable mineral deposits, of whatever kind, if in the form of *veins* or *lodes* of *quartz*, or other *rock in place*, while in the second (Sec. 2329), they were intended to include all forms of mineral deposit, of whatever kind or nature—whether metallic or otherwise—excepting *veins* of *quartz* or other *rock in place*.

Such seems to be a fair and reasonable construction of the sections in question, and in my judgment, is the only one that accords with the manifest purpose of the act as a whole, which was, as we have seen, the adoption of a general scheme or system for the development of the mineral resources of the country. The larger and more comprehensive provisions of both sections 2318 and 2319, must be given reasonable effect and operation—they cannot be ignored—and the Department is not aware of any rule of construction requiring that the specific designations used in the succeeding sections, shall operate to restrict or limit the meaning and effect of such larger provisions. Furthermore, if the rule of *ejusdem generis* were held to apply, and the construction contended for adopted, the result would be equivalent to saying that Congress, after having declared that "all valuable mineral deposits" in the public lands, without reservation or restriction as to kind or nature, shall be free and open to exploration and *purchase*, has provided a means for the *purchase* only of a certain class (the metallic) of such valuable mineral deposits. Such a construction would reduce the

statute to an absurdity. This would furnish a sufficient reason for its rejection if there were no other.

Ever since the enactment of the mining laws, however, as has been shown, the construction by the Land Department, with practical uniformity, has been the other way. The more liberal view was early adopted and has since prevailed to the extent that many titles to lands patented as mineral, though of the non-metallic class, are now depending upon it. This view having been generally accepted for so long a time, and property rights having grown up under it, there should be, in my judgment, the clearest evidence of error, as well as very strong reasons of policy and justice controlling, before there should be a departure from it.

In the case of United States *v.* Moore (95 U. S., 760–3) the supreme court said:

> The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons.

And in the more recent case of Brown *v.* United States (113 U. S., 568–71) it was held by the same court, citing Edwards *v.* Darby (12 Wheat., 206), that—

> in the construction of a doubtful and ambiguous law, the contemporaneous construction of those who are called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to great respect.

These authorities are especially appropriate here, and in my judgment should be regarded as of controlling weight in support of the construction which has heretofore prevailed.

It may be well to note in this connection, that soon after the decision in the case of Conlin *v.* Kelley, *supra*, wherein lands containing stone, useful only for building purposes, were held not subject to the operation of the mining laws, Congress, by act of August 4, 1892 (27 Stat. 348), especially declared that lands "chiefly valuable for building stone," should be enterable "under the provisions of the law in relation to placer mineral claims." It would thus seem that Congress regarded even the ruling in that case as a departure from the liberal construction theretofore adopted by the Land Department, to such an extent as to demand legislative action disapproving the result thereof.

Sufficient has been said to show what has been the long-continued practice of the Land Department, and to point out the danger and harmful results of a departure from that practice at this late day. Independently of these things, however, it may be added that the construction, as an original proposition, appears to be clearly right. The Department, therefore, in concluding this branch of the case, adheres to the rule:

That whatever is recognized as a mineral by the standard authorities on the subject, whether of metallic or other substances, when the same

is found in the public lands in quantity and quality sufficient to render the land more valuable on account thereof than for agricultural purposes, should be treated as coming within the purview of the mining laws.

The lands here involved being admittedly of great value for the deposits of marble they contain, and valuable only on account thereof, are clearly within the meaning of the rule thus laid down, and must therefore be held subject to entry under the mining laws, unless it be held that mineral lands of such character are not within the exceptions from the railroad and State grants in question.

This brings us to the other phase of the contention: That the determination or classification of lands as mineral within the meaning of the mining laws, does not furnish a guide for the classification of lands as mineral within the meaning of the excepting clause of the grant of July 2, 1864; in view whereof it is insisted that though lands chiefly valuable for minerals of the class other than metallic may be subject to entry in some instances under the mining laws, yet no lands but those containing the metalliferous minerals can be held to come within the meaning of the exception from said grant.

At the very threshold of the discussion of this branch of the case, we are met by the aforesaid act of July 1, 1864, passed the day before the grant to the railroad company was made, wherein it was declared that coal—a non-metallic mineral—is within the exception of mineral lands in the pre-emption act of 1841, and with the case of Mullan *v.* United States, *supra*, holding that this was a legislative declaration to the effect that coal lands are mineral lands within the meaning of that term as used in statutes regulating the public lands, unless a contrary intention is clearly manifest. This legislative interpretation of the word "mines," used in the pre-emption act, as including non-metallic minerals, given the day before the grant to the railroad company was made, is very significant, and would seem to negative all idea that Congress intended by the use, the next day, of the term "mineral lands," in said grant, to include thereby only lands containing the metalliferous minerals. The larger and more comprehensive meaning would seem clearly to have been intended, in the absence of anything plainly manifesting a contrary purpose.

Again, the proviso in the excepting clause of the company's grant, that the word "mineral" when used in the act shall not be held to include *coal* and iron, clearly shows the mind of Congress on the subject. If the purpose had been to except from the grant only lands valuable for metalliferous minerals, there would have been no necessity for said proviso as to coal; and if the exception of mineral land would have included coal, as must be admitted, there is no apparent reason why the exception may not include any other fossiliferous mineral substance, if the lands containing it are chiefly valuable on that account. The contention that this would make the exception co-extensive with

the grant, is fully answered by the condition that in all cases the lands must be *valuable* for their minerals, which, under a long line of decisions, has been held to mean: chiefly valuable for minerals, or, which is the same thing, more valuable on that account than for agricultural purposes. There is nothing in the act making the grant to this company, nor in any contemporary legislation on the subject of which the Department is aware, that clearly manifests an intention on the part of Congress to restrict or limit the meaning of the term "mineral lands" as used in said grant to metalliferous minerals only. The same may be said of the grant to the State.

In the act of February 26, 1895, (28 Stat. 684) which provided for the examination and classification, in the States of Montana and Idaho, of mineral lands within the limits of the company's grant but excepted therefrom on account of their mineral character, it was declared (Section 3):

> That all lands shall be classified as mineral which by reason of valuable mineral deposits are open to exploration, occupation, and purchase under the provisions of the United States mining laws.

The act also contains the proviso that the word "mineral" shall not be held to include coal and iron, the same as in the original grant. Here we have what appears to be a subsequent legislative interpretation of the meaning of the exception of "mineral lands" from the company's grant. It is, in effect, that all lands which by reason of valuable mineral deposits are open to exploration, occupation, and purchase, under the provisions of the mining laws, shall be classified as "mineral lands" within the meaning of said exception—not including, of course, coal and iron. In view of this interpretation, it seems plain that in the mind of Congress the term "mineral lands," as used in said grant, is the equivalent of the terms "lands valuable for minerals," and "all valuable mineral deposits," as used in the mining statutes. This interpretation is in entire harmony with the contemporaneous and long continued construction by the Land Department.

The case of Tucker *v.* Florida Railway and Navigation Company (19 L. D., 414) is cited and relied on as holding the contrary view. In that case the Department, after referring to the exception of mineral lands from the grants made during the year 1864, and subsequently thereto, and the provision that the word "mineral" as therein used should not include coal and iron, further said:

> It would seem, therefore, that the word "mineral" is given a limited construction, and when this fact is taken into consideration with what has been before stated on the subject of mineral legislation, it would seem that the purpose of the word "mineral" as used in the act of June 22, 1874, *supra*, was to except from selection, on account of said act, those lands containing valuable metals, such as gold, silver, cinnabar, and copper. The word was not used in its broader sense, for the greater part of the earth contains mineral in some form, the value of which often depends upon its location, or the state of advancement of science which makes known its uses.

The selections authorized by the act of June 22, 1874, were of "lands not mineral"—practically the same exception as that contained in the Northern Pacific grant. The theory upon which the decision seems to be based is, in part at least, that the express exclusion of coal and iron from the mineral exception in the grants of 1864, and subsequent grants, is an indication that the word mineral was used by Congress in a restricted or limited, and not in its broader sense. It does not appear to me that this theory can be sustained. Indeed, it would seem that exactly the opposite view is supported by sound reasoning. The very fact that the express exclusion of coal—a non-metallic mineral—from the exception of mineral lands, was necessary in order to exclude it, shows that the word mineral was not used in its limited sense, and that it was used in that broader sense which includes all mineral deposits of whatever kind or nature. There does not appear to be any reasonable question of the soundness of this view, and it is in exact accord with the legislative interpretation shown by the act of February 26, 1895, which was passed after the decision in the Tucker case.

The further argument that the word was not used in its broader sense for the reason that the greater part of the earth contains mineral in some form, has been already answered in the statement that under the law, in all cases, the land must not only contain mineral but must be chiefly valuable on account of its mineral.

In view of what has been said on this point, the Department is of the opinion and decides:

That lands containing valuable mineral deposits, whether of the metalliferous or fossiliferous class, of such quantity and quality as to render them subject to entry under the mining laws—that is, where they are more valuable on account of such mineral deposits than for agricultural purposes—are "mineral lands" within the meaning of that term as used in the exception from the grants to the railroad company and to the State.

As the lands here in question come clearly within the rule thus announced, those portions thereof situated in sections 15 and 21, must be held as excepted from the grant to the Northern Pacific Railroad Company, and its application to select the same will be rejected. That portion in section 16, must be held as excepted from the grant to the State. Upon proper showing of compliance with the mining laws, the lands may be patented to the mineral claimant. Your office decision is therefore reversed.

The case of Tucker *v.* Florida Railway and Navigation Company, and all other cases in conflict with the views herein expressed, are hereby overruled.